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ABSTRACT

This report provides guidance on conducting tenure evaluations that are thoughtful and just. Practical suggestions for the tenure evaluation process fall into four themes. The first is that of the need for clarity in standards and procedures for evaluation. Institutions should ensure that their stated criteria for tenure match the criteria that, in actual practice, the institutions apply. A second major theme is that tenure decisions must be consistent over time among candidates with different personal characteristics, such as race, gender, disability, and national origin. A third necessity is candor in the evaluation of tenure-track faculty. Periodic evaluations should be candid and expressed in plain English. The fourth theme is that of caring for unsuccessful candidates. Faculty and administrators must treat an unsuccessful tenure candidate with professionalism and decency. Active efforts to assist the candidate in relocating to another position are of mutual benefit to the individual and the institution. (Contains 23 references.) (SLD)

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Good Practice in Tenure Evaluation

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A Joint Project of
The American Council on Education
The American Association of University Professors and
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Introduction

This report provides guidance on conducting tenure evaluations that are thoughtful and just. Flawed tenure processes can exact a heavy toll on the unsuccessful candidate, his or her colleagues, and the institution. Our hope is that the good practices offered here may lessen the frequency and impact of disputes over tenure. We seek not to debate the merits of tenure in American higher education, but rather we seek to examine the tenure process and offer some suggestions to those responsible for conducting it.

Each year, thousands of nontenured faculty members undergo evaluations of their work, and each year a smaller but still significant number are evaluated for tenure.[1] A recent study quantified some faculty concerns about the process. Of 378 faculty members surveyed at 19 four-year institutions, 37 percent said that standards for tenure and promotion were unclear. This sentiment existed even among senior faculty members who had themselves received tenure.[2] It is no startling revelation that problems occasionally arise in tenure reviews. Most academics can recount a first- or second-hand tale about a difficult case. Unsuccessful candidates may file appeals on their campuses challenging tenure denial, and, with increasing frequency, they resort to the courts for redress of perceived discrimination, breach of contract, or other legal wrongs. Judges then have the final responsibility to assess tenure standards and procedures.

This report originated at a meeting convened by the American Council on Education (ACE), the American Association of University Professors (AAUP), and United Educators Insurance (UE).[3] These collaborating organizations have complementary interests in American higher education:

The American Council on Education

ACE is a comprehensive association of the nation's colleges and universities dedicated to analysis of higher education issues and advocacy on behalf of quality higher education and adult education programs. Counted among ACE's members are more than 1,800 accredited, degree-granting colleges and universities and higher education-related associations, organizations, and corporations. For further information, visit www.acenet.edu.

The American Association of University Professors

AAUP is a nonprofit charitable and educational organization that supports and defends the principles of academic freedom and tenure and promotes policies to ensure academic due process. AAUP has more than 45,000 members at colleges and universities throughout the country. For further information, visit www.aaup.org.

United Educators Insurance Risk Retention Group, Inc.

Founded in 1987, UE provides insurance to colleges, universities, and related organizations. It is owned and governed by over 1,000 member institutions. UE offers policies that cover legal disputes over the denial of tenure. For further information, visit www.ue.org.

Following the meeting, the organizations developed the specific recommendations offered here. We hope this report will promote self-reflection by those who evaluate tenure-track faculty, as well as general institutional dialogue and improvement.

Ann H. Franke, Esq.
Vice President for Education and Risk Management
United Educators Insurance

Summary

Practical suggestions for the tenure evaluation process fall into four major themes. These suggestions speak to various audiences–notably department chairs, senior faculty who participate in evaluating tenure-track faculty, and academic administrators.

Clarity in Standards and Procedures for Tenure Evaluation

Institutions should ensure that their stated criteria for tenure match the criteria that, in actual practice, the institutions apply. Department chairs and other responsible administrators should clearly communicate all criteria, including any special requirements applicable within a department or a college, to a tenure-track faculty member early in his or her career at the institution. When the tenure review occurs, complications can arise if positive developments (such as the acceptance of a book for publication) or negative allegations (such as harassment charges) come to light. Institutions should anticipate these possibilities and develop procedures in advance for handling them. Another potential source of difficulty lies in the personal opinions expressed to those responsible for conducting the review. An institution should adopt a consistent approach to handling private letters and conversations, outside the normal review process, concerning the merits of a tenure candidate.

Consistency in Tenure Decisions

Tenure decisions must be consistent over time among candidates with different personal characteristics–such as race, gender, disability, and national origin. Protections in law and institutional policy against discrimination apply with full force to the tenure process. Consistency also requires that the formal evaluations of a single individual over time reflect a coherent set of expectations and a consistent analysis of the individual's performance. Department chairs and other colleagues should not convey excessive optimism about a candidate's prospects for tenure. A negative tenure decision should not be the first criticism the individual receives. Everyone who participates in reviews must scrupulously follow tenure policies and procedures, and administrators should take special care when reviewing candidates from their own disciplines.

Candor in the Evaluation of Tenure-Track Faculty

The department chair or other responsible administrator should clearly explain to every tenure-track faculty member the standards for reappointment and tenure and the cycle for evaluations of his or her progress in meeting these requirements. Periodic evaluations should be candid and expressed in plain English. They should include specific examples illustrating the quality of performance, constructive criticism of any potential areas

for improvement, and practical guidance for future efforts.

Caring for Unsuccessful Candidates

Faculty and administrators must treat an unsuccessful tenure candidate with professionalism and decency. The person responsible for conveying the disappointing news should use compassion, and colleagues should take care not to isolate the person socially. Active efforts to assist the candidate in relocating to another position redound to the mutual benefit of the individual and the institution.

Chapter 1
Clarity in Standards and Procedures for Tenure Evaluation

Most colleges and universities have well-articulated tenure policies. Over time, their faculty and administrators have collaborated on crafting standards and procedures that fit their unique institutional circumstances. Experience suggests, however, that some aspects of a tenure policy may nonetheless be overlooked, creating the potential for uncertainty or conflict. Faculty and administrations that anticipate these issues and develop thoughtful and consistent approaches to them will be best positioned to defend their decisions.

The tenure policy should comprehensively list all the major criteria used for evaluation.

"Teaching, research, and service" is the standard trilogy for evaluating faculty. Some institutions have enlarged these criteria with additional factors, while others rely on the traditional three. Whatever the formulation, an institution should assess, through its appropriate decision-making bodies, whether its policies accurately reflect the actual operation of its tenure system. Do tenure evaluators sometimes use unstated factors? Examples might include student enrollment, success in attracting external funding, or long-term institutional needs.

If a tenure denial is based on a criterion that does not appear in the written policy, the unsuccessful candidate may challenge the decision as unfair and improper. Some courts are sympathetic to these claims. Other courts give campuses latitude in interpreting, for example, "research" as including the ability to attract external funding, or "teaching" as including social skills in relating to students. The safest course is to articulate written standards that reflect the major criteria that are actually used.

The evaluators at all stages in the tenure process should know—and apply—the criteria.

After the institution identifies the major criteria, the next logical steps are to distribute and follow them. Many people may be involved in a tenure evaluation: senior faculty in the candidate's department; members of a campus-wide tenure committee; the dean; the provost; the president; and, on most campuses, the governing board. Each evaluator at each stage must know and apply the proper criteria.

Has the candidate's department adopted special requirements relevant to its discipline? Fields such as studio and performing arts, for example, often require creative output in forms other than traditional scholarly publishing. Computer scientists might use software development to demonstrate professional achievements. Even departments such as history or mathematics may have tailored criteria specific to their particular goals. The institution should take special care in evaluating interdisciplinary scholars to ensure that all evaluators measure the can-

didate against the same yardstick. Whatever the criteria, all evaluators should know and apply them.

The tenure policy should address whether tenure evaluators will consider positive events occurring after the tenure application has been submitted.

Most institutions require candidates to submit comprehensive applications detailing their achievements. The policy should specify whether the evaluation will take into account developments occurring after the candidate has completed his or her application. A faculty tenure committee may need to be alert to the possibility, for example, that a publisher may finally accept a candidate's manuscript *after* the tenure review has begun. Will this positive development carry weight in the tenure process? If so, who is responsible for supplementing the application with the new information? Can the candidate add the new information at any stage of the process, or is it at some point too late? If the candidate adds new information, should he or she receive reconsideration at any earlier stages?

While subsequent developments are most often positive, such as a new publication or improved teaching evaluations, they need not be. After applying for tenure, the candidate might suffer a decline in teaching evaluations, receive a harsh review of a recent book, or, in rare instances, be found to have engaged in sexual harassment or plagiarism. Commentators sometimes use the terms "static" and "dynamic" to distinguish between those tenure systems that accept new information during the review process and those that do not. An institution is well-advised to adopt policies that make clear in advance which approach it will use and, of course, to adhere to its policies. Positive developments can extend the tenure process; negative developments, as discussed below, may interrupt it.

The tenure policy should indicate what steps the institution will take if a faculty member under consideration for tenure is charged with misconduct or if other negative events emerge.

The problem of unexpected negative information is infrequent but can prove very troublesome. An allegation of misconduct may be made against a faculty member who is undergoing tenure evaluation. For example, a senior professor may allege during the departmental tenure deliberations that the candidate has included on his resume a paper that was actually written entirely by a graduate student. Unsigned or signed letters alleging sexual harassment may arrive from students. Someone may offer a rumor that the candidate has been charged with domestic violence, whether recently or in the distant past.

We strongly encourage institutions to seek legal advice in these situations *before* completing the tenure review. Beyond this generic advice, institutions take varied approaches.

Some institutions will channel such allegations into a campus dispute resolution mechanism, such as the college or university sexual harassment procedure. The institution will suspend the tenure process until completing the other proceeding. Other institutions give the candidate notice of the allegations and an opportunity to respond directly to the tenure committee. Under a hybrid approach, the institution might offer the candidate the option of a separate proceeding or consideration directly by the tenure committee. Still other institutions may decline to receive or consider in the tenure process any unsubstantiated or unresolved allegations of misconduct. An AAUP investigating committee concluded in one case that a probationary faculty member charged with misconduct during the course of a tenure evaluation should have received written charges stated with particularity, time to for-

mulate a response, and an opportunity to appear before the decision makers to present the response. Advice of legal counsel may well be helpful in ensuring compliance with institutional policy and legal responsibilities in these complex situations.[4]

Evidence of serious misconduct might come to light after tenure has been awarded. Rather than revisiting the award of tenure, the better course is to invoke the regular disciplinary process applicable to tenured faculty.

The tenure policy should address the voting protocol when an evaluator serves at more than one level of review.

A member of the candidate's department may serve on the campus-wide promotion and tenure committee. If someone "wears multiple hats," the question arises whether that individual votes once or twice on the tenure candidacy. Consider, for example, a full professor in biology who serves on the college-wide review committee. If an assistant professor in biology has applied for tenure, would the senior colleague vote only within the department, only on the college-wide committee, or at both levels? Smaller institutions may face this question most often. There is no single correct answer. The best approach is to anticipate the situation, address it through clear written policies, and then follow the policies consistently.

Individual faculty members may wish to express their own opinions about a tenure candidate to members of the campus-wide promotion and tenure committee or to the administration. The tenure policy should address how the recipients should treat these individual opinions.

Consider this scenario. A senior faculty member strongly believes that a junior colleague should not receive tenure. She is, however, unable to convince the department, which votes to recommend the award of tenure. She writes a separate letter to an acquaintance on the promotion and tenure committee, or to the dean, forcefully explaining her opposition to the candidate. Is such a letter proper under the institution's policies? How should the recipient handle it? Should the tenure candidate be informed about the letter?

Senior faculty members often hold strong opinions about tenure candidates. They may seek to express their opinions, whether positive or negative, privately to individuals with influence in the evaluation process. They may write letters or e-mails or engage in conversations. From a policy standpoint, the institution's rules should clarify whether such individual opinions may be properly conveyed and considered. If so, how should the recipient use the information? Should it be shared with evaluators who were involved earlier in the process, or should it be shared with the candidate?

The press has reported on one illustrative situation at New York University. A candidate who directed an ethnic studies program received a departmental vote of 17 to 1 in favor of tenure. The lone dissenter, a former dean, wrote a private 10-page letter to the incumbent dean sharply criticizing the candidate's scholarship. Unknown to the candidate or the department, the letter became part of the tenure file. According to the press account, the promotion and tenure committee voted 8 to 2 against tenure, relying in part on the critical letter. The letter writer and the department disagreed over the propriety of the separate letter. Was it an exercise of the dissenter's right to express his opinion or a subversion of the department's democratic process? The administration ultimately offered the scholar a tenured position.[5]

From a litigation standpoint, a senior professor needs to understand that her letter may become public through the discovery process. If the candidate about whom she

wrote the letter is denied tenure, that individual may file suit and would receive access to the letter. Suppose, however, that the private, critical letter is unpersuasive and the candidate receives tenure. The letter remains in the institution's files. Now suppose another scholar is denied tenure. The letter will come to light in a lawsuit if the court compares the evaluations of the successful and unsuccessful candidates. The trial judge can also order disclosure of verbal comments.

This problem is not hypothetical. In one tenure battle that landed in court, a senior historian had written a "confidential" letter to the dean of the faculty questioning whether a male historian had been evaluated less rigorously than female historians during their tenure candidacies. The male historian received tenure. A female scientist who subsequently was denied tenure sued and compared her qualifications to those of the male historian. The "confidential" letter from the senior history professor was presented as evidence at the trial and was reported in the press.[6]

Given the realities of academic life, some individual faculty members may well wish to share their unsolicited opinions about candidates with decision makers in the tenure process. The best course is for institutional policy to address the possibility. Key issues are whether the candidate receives notice about the communication and what weight, if any, the recipient may place on that communication. Good institutional rules will offer guidance so that all participants in the tenure process share a common understanding.

Checklist on Clarity

- ✓ The tenure policy should clearly state the criteria for tenure and should encompass all the major factors actually relied upon in evaluating tenure applications.
- ✓ Evaluators at all stages of the tenure process should know and apply the criteria appropriate to the candidate.
- ✓ The tenure rules should clearly explain whether evaluators will consider positive events subsequent to the submission of the tenure application—such as acceptance of a manuscript for publication—in making their evaluations.
- ✓ The institution should formulate a plan for handling allegations of misconduct or other negative information that may arise during the tenure process.
- ✓ A senior faculty member who serves on a college-wide tenure committee should know, in advance, whether he or she should vote on a tenure candidate in the department, at the college-wide level, or both.
- ✓ The institution's rules should address what weight, if any, decisionmakers should give to informal and unsolicited opinions they receive about tenure candidates and whether candidates should be informed about such unsolicited communication.

Chapter 2
Consistency in Tenure Decisions

Institutions strive for the highest standards of fairness in individual tenure decisions. They evaluate each candidate with great care, conducting a time-consuming and elaborate review. The process places the candidate's achievements under intense scrutiny as his or her application proceeds through the various levels of review. The goal is a correct judgment based on the merits of the individual's qualifications. Sometimes, though, evaluators overlook the role of consistency. The fairness of the tenure process depends not just on the outcome of an individual decision, but also on the consistency of multiple decisions over time.

The faculty, administration, and governing board should strive for consistency in the operation of the institution's tenure evaluation process.

The challenge of consistency of evaluation is well known to anyone who has graded a large stack of student essays. Does the professor judge the first paper by the same standards as the one at the bottom of the pile? Consistency in tenure decisions presents a larger challenge. Evaluators make tenure decisions primarily on an individual basis rather than a comparative one. Student essays are graded within a relatively short time frame, but tenure decisions are made on an ongoing, periodic basis and through a process of successive recommendations leading to a decision. Candidates come from different disciplines. Most significantly, tenure decisions require a highly nuanced assessment of professional achievement.

From a legal standpoint, consistency in tenure decisions is a central concern. In 1972, Congress decided that colleges and universities must abide by the federal laws prohibiting employment discrimination. Tenure decisions thus receive close scrutiny from judges and juries as to whether the institution has equitably treated tenure candidates of different races, genders, national origins, religions, ages, or disability status. Sexual orientation may be relevant under state or local law or campus policy. Institutional policies typically list the types of discrimination that the institution prohibits. Inconsistency in tenure decisions, legally termed "disparate treatment," is the essence of legal challenges alleging that an institution's tenure process is discriminatory.

The courts typically allow an unsuccessful tenure candidate who sues for discrimination to compare his or her situation to those of scholars who have received tenure. An African-American electrical engineer suing for racial discrimination, for example, will point to the qualifications of white electrical engineering faculty members who have received tenure. A court may allow the plaintiff to compare his candidacy to those of white professors in other departments such as civil engineering, physics, or even more remote fields such as languages or social sciences. Yet different disciplines may apply different standards for tenure. Clinical programs are a good

example. Departmental tenure standards that articulate the different criteria will facilitate the legal review of the consistency of decisions.

Given that judges and juries will compare the institution's tenure decisions over time and across disciplines, faculty and administrators need to pay heed to the consistency of tenure decisions. Reviewers at each level, from the department to the ultimate decision maker, should ask, "How does this candidate compare to others we have evaluated for tenure in the recent past?" Each tenure candidate is unique, and the evaluation process is anything but mechanical.

Even in the face of these difficulties, however, the institution needs to be alert to inconsistencies, particularly gross or blatant ones. One institution gives its university-wide committee a special role in checking for consistency. The committee members' terms are staggered so that at any given time at least one member of the committee has served for six years. With each new tenure decision, the committee compares the candidate to the candidates it has evaluated over the past six years. Whether using this type of mechanism or others, the committee best devotes its attention to the consistency of decisions before a lawsuit is filed rather than after.

The faculty and administration should strive for consistency over time in their review of the work of each nontenured faculty member.

It is important for the department chair and other reviewers to be consistent over time when evaluating an individual candidate. An assistant professor may, for example, receive five successive annual evaluations from her department chair that praise her for excellent teaching. In the sixth year, the department chair begins to criticize her teaching. The change may be due to an actual decline in the candidate's performance, or it may be due to a change in the chair's approach to the evaluation. The institution should strive for consistency in the successive evaluations of an individual candidate. If challenged in a lawsuit, an institution is placed at a distinct disadvantage if an unsuccessful candidate for tenure received only excellent evaluations up to the point of tenure rejection.

Consistency in successive evaluations, of course, does not require that evaluators photocopy the same written comments and reuse them annually. Successive evaluations should, rather, faithfully reflect the candidate's performance, including both improvements and declines. A careful department chair will review the prior evaluation before writing the next one as a check on both the expectations that were conveyed and the candidate's progress in meeting them. The evaluations may also be useful items to include in the tenure application file. Faculty and administrators who conduct tenure reviews may benefit from seeing the earlier annual evaluations. If a candidate received earlier excellent evaluations but is rejected for tenure, he or she will be understandably frustrated by what appear to be capricious and misleading actions.

A department's counseling of nontenured faculty members should be consistent with its and the institution's tenure requirements.

The department bears the major responsibility for ensuring that a tenure candidate receives appropriate ongoing counseling during the probationary period. In several recent tenure disputes, departments have been faulted for providing inconsistent counseling or guidance to a junior faculty member.

In one situation, the president of a research university addressed a grievance filed by an unsuccessful tenure candidate. In deciding the grievance, the president wrote to the candidate explaining that he was assessing "whether you were substantially misled about your progress in meeting University standards." The president concluded, "In light of the exceptionally incautious feedback that you received from your department, you may not

have taken every opportunity available to you to make more progress on your second project before your tenure review . . ." Based on this flaw in the department's treatment of the candidate, the president upheld the grievance, offering as a remedy additional time and another tenure review.

Departmental evaluations that are inconsistent with the institution's requirements can also be problematic. At Trinity College in Connecticut, the chemistry department had supported the tenure candidacy of Dr. Leslie Craine. When the college's Appointments and Promotions Committee voted against Craine, the department wrote to the committee asking for reconsideration. As quoted in the *Chronicle of Higher Education,* the department blamed itself for not doing a better job of counseling Craine. Two years before the tenure decision, the department had evaluated whether Craine was on target for tenure. The department explained to her the publication requirement and, two years later, in the department's opinion she had satisfied the requirement. After the negative tenure decision, the department wrote to the committee, "To change the rules between the second and the final [review assessing her progress towards tenure] is fundamentally unfair."[7] According to the press account, the department faulted itself for causing the institution to treat Craine inconsistently over time.

These cases illustrate the serious problems that can arise if a department's approach to a tenure candidate is inconsistent with the institution's requirements as interpreted by other bodies.

Tenure files should contain the proper information and should be retained after the decision.

The tenure process is laden with paper. The department chair and other responsible officials should take care in assembling the review materials. They need to attend to what is compiled and who is responsible for its safekeeping. The candidate may later complain that the department chair or dean improperly excluded certain items favorable to her from her tenure dossier. Alternatively, she might complain that the chair or dean improperly included unfavorable items. Consistency is key. In challenging the composition of the dossier, an unsuccessful candidate will use other tenure files to illustrate proper and improper items. Some institutions give the candidate the right to inspect the dossier during the tenure process or shortly thereafter.

Safekeeping the materials is critical if the institution must later explain its decision. Occasionally a situation may arise in which the tenure dossier disappears after the decision is made. Under federal regulations, institutions receiving federal funds are required to retain records concerning promotion or termination for at least two years after the date of the action (29 CFR § 1602.49, 41 CFR § 60-1.12). State laws or institutional protocols may specify a longer period. One recommended approach is the retention of all employment records through the duration of the individual's employment and for seven years thereafter.[8]

If the candidate is in the same discipline as an administrator involved in the tenure process, the administrator should handle the tenure application consistently with other applications.

An administrator should take care in reviewing the tenure application of a candidate specializing in the same discipline as the administrator. The administrator should treat the application the same way as those of candidates in other fields. While the administrator can certainly draw on his or her detailed knowledge of the discipline, the safest course is not to deviate in other respects from the normal tenure review process.

Consider, for example, a provost who is a political scientist. She might be tempted, when reviewing the tenure application of an assistant professor in political science, to call a few trusted colleagues at other institutions

for their opinions. If she departs from normal practice, and if the candidate is rejected, the candidate may argue that the outsiders were unduly influential. The candidate might argue further that the provost specifically sought negative opinions in an effort to scuttle the tenure application.

Another example is the administrator who will soon return to the faculty. If the administrator recommends against tenure for a candidate from the same field, the individual may allege that the administrator acted out of biased self-interest. The candidate may assert that the administrator wished to save a "slot" for his or her return to the faculty or did not want to compete with the more successful junior scholar.

Fortunately, these situations are relatively uncommon. They underscore, however, that special circumstances enhance the need for consistency.

All reviewers should follow tenure procedures to the letter.

An unsuccessful tenure candidate may seek to overturn the decision by pointing to irregularities in the handling of his or her tenure review. It is easy to state the abstract proposition that a college or university should faithfully and consistently follow its own procedures. Turning this abstraction into a reality requires ongoing vigilance and attention to detail.

The use of outside letters of reference offers a ready illustration. In one case at Kansas State University, a federal judge noted a departure from institutional rules on external letters:

> The tenured faculty voted without having reviewed letters from faculty out side of the school (outside reviewers), which was the school's practice, although the school's written procedures provide for such information to be available or review prior to voting.[9]

In another case, the University of Minnesota solicited more than 40 external review letters about a female mathematician, while the normal number would have been six to 10.[10]

The best written rules are not always easily applied to actual situations, but all evaluators should strive to adhere as scrupulously as possible to the institution's tenure review procedures. Letters of reference are one potential point of contention. A fuller list of the key steps in the tenure process that require close attention includes:

- Compilation of the tenure application file.
- Procedures for identifying external referees.
- Voting eligibility of departmental members (including faculty on leave).
- Availability of written materials to committees and individual administrators who vote on the candidacy.
- Informal communications made outside the official review process about the candidate.

One institution has built a procedural check into its tenure process. Before notifying a candidate of tenure denial, those evaluators who have had major responsibility for the review meet and work through a checklist to confirm that they have handled each procedural element of the tenure process correctly. Such a review can flag missing materials, missed deadlines, or other irregularities.

Departures from the tenure procedures may be reviewed in the unpleasant context of litigation. The institution will probably argue that the irregularity was not legally defective. Even if the institution prevails, the distraction and expense of litigation might have been avoided had the procedural error never arisen.

Checklist on Consistency

- ✓ Ensure that tenure decisions are consistent over time among candidates who have different personal characteristics that are legally protected such as race, gender, disability, ethnic origin, and religion.
- ✓ Ensure that the formal evaluations of non-tenured faculty and what they are told informally about the quality of their work are based on a consistent set of expectations. A negative tenure decision should not be the first criticism of the individual's performance.
- ✓ The department should provide advice to faculty during the probationary period that is consistent with its and the institution's expectations for tenure. Departments should be cautious about conveying excessive optimism about prospects for tenure.
- ✓ The tenure application dossier should include all required materials and exclude items that the institution has not used for other candidates.
- ✓ Administrators should take special care, when reviewing candidates in their own disciplines, that they not depart from standard tenure processes.
- ✓ All reviewers should scrupulously follow tenure procedures. Deviations can be used as evidence that the institution breached its obligation to conduct a fair review.

Chapter 3
Candor in the Evaluation of Tenure-Track Faculty

The concepts of clarity, consistency, and candor are useful in analyzing tenure evaluation procedures. Admittedly, though, the categories overlap somewhat. If, for example, tenure criteria are not clear, then it will be difficult if not impossible to counsel a tenure-track faculty member candidly about his or her progress in meeting them. Examining institutional processes from the perspective of tenure-track faculty can be instructive. Here are some observations from tenure-track faculty that illustrate the stresses they face.[11] Their concerns also illustrate the overlapping nature of clarity, consistency, and candor:

> "What does it take to get tenure? That's the million dollar question. Standards change, and you never know how many articles you need."

> "I had a book contract, and in my second year review, they said I should concentrate on articles, not the book. So I did. In my fourth year review, they said, 'Where's the book?'"

> "I'm in business, but my field is in psychology, so about half my work is published in psychological journals. My department chair told me that was fine." The dean of this individual, however, told the interviewers, "What advice would I give to a young faculty member? I'd tell them to publish in business journals. We are a professional field and we should service the profession. To publish elsewhere would be a risk."

> "Almost 50 percent of my time is [spent] on committees. The problem is that we don't have enough senior faculty to go around, and those who are senior don't want to serve. The department chair feels he doesn't have a choice, and the dean seems oblivious. There are always good reasons to put me on a committee; it's just that I don't think it will help me get tenure."

> A faculty member at a small college described her third-year review: "That year the review was just a mess so it wasn't particularly helpful . . . They wanted names of three potential reviewers and so I did my research about people who were in appropriate institutions and so on and submitted the names. Then some time passed and finally I got word that all the reviewers had to be local and none of the reviewers I had given them were local. That meant that in a matter of two or three days I had to come up with new names. It was incredibly stressful."

Responsibility for candor falls most squarely on the department chair or other individual charged with the direct, ongoing review of a tenure-track faculty member.

Mathematician John B. Conway has described for fellow department chairs the overriding importance of candor in evaluations:[12]

> "On humanitarian and professional grounds, junior faculty should get a clear understanding of their status long before tenure is considered.
>
> "It is the head's solemn duty to report to the candidate any bad news that comes out of the retention review. In a serious situation, the candidate should be asked to respond in writing. No one likes to communicate bad news. (Well, almost no one.) But it is absolutely essential that you do this, especially now. A head who puts on kid gloves at such a time is doing no one a favor. If the report is so bad that it seems irredeemable, terminate the candidate now before tenure is considered.
>
> "There is the legal question, but there is also your obligation as a human being and the unofficial mentor of this young colleague. Do you really want them to spend the next few years thinking there is nothing to correct? That what they have been doing is leading toward tenure? And meantime the faculty is anticipating change and will conclude, when it fails to appear, that this person did not heed a warning and, hence, is unworthy of tenure. I have known of cases where a department head did not pass on the faculty's concerns. When tenure was eventually denied, the candidate was shocked, the faculty discovered their warnings were not transmitted, and the head's prestige and reputation suffered.
>
> "A word of caution here is advisable. With five or six years of contact, people can become very friendly. Sufficiently friendly that hard decisions are almost impossible. Remember you are running a department, not a club. Chumminess is not an area where excellence suffices for tenure. Nice young mathematicians do not invite harsh judgments, but your job, and that of your colleagues, is to promote the well-being of the university. It is not to promote the sociability of the department."

The temptation to put social concerns ahead of academic needs is real. In an article about a multimillion dollar jury verdict in a tenure denial case involving a chemistry professor, the press reported:

> "David Henderson, then chairman of the chemistry department, said recently that he and his colleagues incorrectly perceived their roles as Ms. Craine's advocates. 'She was a friend,' he explained. 'We'd worked with her for six years . . . Today, Mr. Henderson describes some of the things that he wrote in the department's letter of appeal as 'hyperbole,' part of a 'calculated strategy' to meet the requirements for appealing a negative tenure decision."[13]

Against this backdrop, we offer three general principles to guide the candor of faculty evaluations.

An institution owes every tenure-track faculty member a clear explanation of the requirements for tenure.

The institution should give every new faculty member an explanation of the requirements for reappointment and tenure. Members of the search committee might convey some information about standards during the interview process. Whatever the nature of discussions during the search process, after appointment the department or administration should fur-

nish a thorough explanation. Subsequent evaluations then provide an opportunity to review the requirements with the candidate. AAUP recommends that:

> Probationary faculty members should be advised, early in their appointment, of the substantive and procedural standards generally accepted in decisions affecting renewal and tenure. Any special standards adopted by their particular departments or schools should also be brought to their attention.[14]

It is vital that the institution promptly inform the candidate of any changes in the standards. Interdisciplinary scholars may require special attention. Faculty members who are affiliated with more than one department face a particular risk that the institution will not clearly define the overall standards for evaluation of their performance, or will change these standards frequently over time.

An institution owes every tenure-track faculty member clear advice about his or her progress in meeting tenure requirements.

The institution's primary goal in the evaluation is to give the candidate a full understanding of his or her progress to date in meeting the requirements. Candor is critical to both the institution and the candidate. The evaluation should be specific and should cover the full review period. Evaluators should avoid broad generalizations such as "Don's teaching has improved over the past year." Add specific details, such as "In his introductory readings course, Don succeeded in motivating the students, stimulating class discussion, and preparing them for upper level work. His new compilation of reading material will have lasting value for our curriculum."

The evaluation should cover the entire review period, not just the most recent few weeks or months. Normally the department chair shares the written evaluation with the candidate. In a meeting to discuss the evaluation, the department chair should take the opportunity to engage the faculty member in a substantive discussion about work to date and realistic prospects for the future. Use the meeting as an occasion for two-way communication, not just a one-way critique.

Most flawed academic evaluations tend to be excessively positive. A sugar-coated review is easiest for the chair to dispense and for the candidate to swallow. But over the long run, it can prove harmful to everyone.

William Tierney and Estela Mara Bensimon have explained the importance of constructive criticism of tenure-track faculty:

> [C]andidates should not be betrayed by the system. If evaluations throughout the first five years have been positive, yet the candidate is denied tenure, then a mistake needs to be rectified. Formal evaluation can be helpful to an individual if it deals with areas for improvement as well as strengths. An organization that does not take evaluation seriously is apt to disable a candidate for tenure because he or she has never received adequate feedback. In effect, the greater blame goes to the organization, but the unsuccessful candidate must pay the penalty.[15]

In today's legal climate, the institution can pay its penalty in the lawsuit that the unsuccessful candidate brings against it.

Evaluators should state their constructive criticism in plain English rather than couching it in the argot of diplomacy. Consider this example. A chair tells a candidate that her most recent published article was "good." The chair means that, while the article was basically acceptable, it did not meet the department's high standards of excellence. The candidate, for her part, perceives the comment as praise. A jury later deciding a lawsuit would likely interpret "good" in the same way as the candi-

Annual Faculty Evaluation
Professor Pam Poe

Teaching

The student evaluations place Pam right at the median within the department. She continues to teach the sophomore introductory lecture course every fall. In addition, her development of the new critical methods seminar for department majors has been a big project. She rolled up her sleeves last summer and produced the new course, offered this spring, that has contributed substantially to the quality of our program.

Research

Pam's research has been showing good progress. We look forward to the publication later this year of the book version of her dissertation by State University Press. In the past year, she has submitted two papers that are under consideration by *The International Bulletin of Methodology*, one of the leading journals in her field.

Service

Pam's service record is outstanding. She chaired the committee that conducted the campus-wide study of life and learning issues for female students. She was the primary author of the committee's report, which made major recommendations for reform in the areas of curriculum, housing, and student activities. On campus, both female and male students eagerly seek her assistance with academic counseling. In the local community, her effective work on the board of the local United Way has brought credit to the college.

Pam is in her fourth year in a tenure-track position. In addition to the across-the-board salary increase, I am pleased to recommend her for an additional 1.5 percent for merit.

Dr. Paul Murky, Department Chair

Sample Evaluations

These are two evaluations of a tenure-track faculty member. Consider their relative candor and usefulness to Professor Poe.

date. The chair's diplomacy has led to a fundamental miscommunication. Chairs, senior faculty, and academic administrators need to pay increasing attention to the potential "downstream" interpreters of their verbal and written remarks. Today these interpreters may include judges, juries, and investigators from the Equal Employment Opportunity Commission.

The evaluation should include guidance for the future.

A good evaluation will include some guidance for the candidate's future efforts. A department chair may encourage a candidate whose teaching is acceptable to devote attention to publishing articles in peer-reviewed journals. The chair might encourage a candidate who has only co-authored publications to write as a

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Over the next two years, I hope to see Pam devote attention to honing her teaching skills. One area she could usefully address is finding ways to encourage broader student participation in discussions. She is not undertaking any new course preparations in the coming year, which will give her an opportunity to consider new creative approaches to student involvement. I would be glad to consult with her on strategies and, if she wishes, to visit her classes occasionally.

Research

Pam's research has been showing good progress. We look forward to the publication later this year of the book version of her dissertation by State University Press. In the past year, she has submitted two papers that are under consideration by *The International Bulletin of Methodology,* one of the leading journals in her field.

Pam understands that the college does not place substantial weight on the publication of dissertations (or other research projects undertaken elsewhere before a scholar joins our faculty). For a successful tenure candidacy, she will need to show a strong record of publication in peer-reviewed journals. At a minimum, the publication of three substantial articles will be required.

Service

Pam's service record is outstanding. She chaired the committee that conducted the campus-wide study of life and learning issues for female students. She was the primary author of the committee's report, which made major recommendations for reform in the areas of curriculum, housing, and student activities. On campus both female and male students eagerly seek her assistance with academic counseling. In the local community, her effective work on the board of the local United Way has brought credit to the college.

Pam and I have discussed the weight that the college gives to service in evaluating faculty. While important, it stands behind teaching and research in our priorities.

Pam is in her fourth year in a tenure-track position. In addition to the across-the-board salary increase, I am pleased to recommend her for an additional 1.5 percent for merit for her role in the development of the new seminar.

Dr. Charles Candid, Department Chair

sole author. The conscientious chair will anticipate the needs of the candidate and the department and will guide the individual in how best to direct his or her energy.

Future guidance should not, however, take the form of promises. For example, "If you get your book out within the next two years, I'm sure you'll be a shoo-in for tenure." Many things can change over two years. The book, when published, may not be good. The institution may decide it does not have a long-term need for the candidate's specialty. A different department chair may assess the candidate's research productivity differently. So, while future guidance is an important element of an evaluation, the chair should couch it as guidance rather than a guarantee.

An institution is vulnerable to challenge if it gives short shrift to any of the elements of candor. Particularly dangerous is the situation in which the institution has offered a candidate glowing evaluations for five years but then denies tenure on the basis of some inadequacy that no one ever communicated during the entire probationary period.

Every tenure-track faculty member deserves:

- ✓ A clear explanation of the requirements for reappointment and tenure, including any criteria specific to the department or school.
- ✓ Periodic evaluations of his or her progress in meeting the requirements.
- ✓ Candor in all evaluations.
- ✓ Specific examples that illustrate the quality of his or her performance.
- ✓ Constructive criticism outlining any potential areas for improvement.
- ✓ A review covering the entire evaluation period, not just the recent past.
- ✓ An evaluation in plain English.
- ✓ Practical guidance for future efforts to meet the requirements, without promises or guarantees that the institution may not be able to honor.
- ✓ An understanding of how a review (or reviews) during the probationary period differs from a later tenure review.

Chapter 4
Caring for Unsuccessful Candidates

"Almost no one in the history department has talked to me this entire semester. I'm like someone who has been airbrushed out of a Kremlin photograph."

– Historian denied tenure at Yale University

"It's like you have leprosy."

– English professor denied tenure at the University of Michigan[16]

At most institutions, a denial of tenure means that the unsuccessful candidate will remain one final year and then depart. Faculty and administrators should continue to treat a candidate who has been rejected for tenure as a professional colleague. The institution can take many steps to help the individual with what may be a difficult transition. If the institution provides assistance and expressions of concern, it may reduce the anger and desire for revenge that some unsuccessful candidates feel. Caring for unsuccessful candidates is a humane and decent thing to do. It is also a good way to prevent some lawsuits.

Deliver the bad news with compassion.

Consider how your institution notifies candidates that they have been denied tenure. The most impersonal way is a short letter. How would you feel if you received this letter?

Dear Professor Jones,

It is my responsibility to advise you that the governing board voted last week to deny your application for tenure and promotion. You will receive a terminal one-year contract running through next June. Let me offer thanks for your years of service to our college and wish you well in your future professional endeavors.

Sincerely,
President Smith

One immediate question would be why the president did not send the letter more promptly after the board voted. But beyond that relatively minor detail, the letter is highly impersonal. It essentially abandons Professor Jones to face the future alone.

Written notice of the tenure denial is important from a legal standpoint. A better letter would provide an opportunity to meet with the provost or other high-level academic administrator to discuss the decision and any relocation assistance that the institution could provide.

Experience suggests that the provost, or similar official, should meet with each candidate denied tenure as soon as possible after the decision. The meeting can begin the process of repairing damage to the individual's self-esteem. The provost uses the meeting to say, in effect, "You're still a good person. You have many fine skills and talents.

At the present time, unfortunately, you and the institution were not a good long-term match." The provost should allow the candidate to express feelings about the situation, which can provide the individual with some catharsis. The provost can also begin to outline ways in which the institution may be able to assist with the candidate's transition.

Encourage colleagues to interact professionally with the unsuccessful candidate after the denial of tenure.

Social isolation can exacerbate the unsuccessful tenure candidate's sense of failure. Colleagues should take care to interact sensitively and professionally with the individual after a negative decision. Take time for conversation and social interactions. Common courtesies can reduce some of the sting of the outcome.

One unsuccessful candidate described the awkwardness of hosting at her home a gathering for prospective students. She was obliged to "sell" them on the value of an institution that had recently rejected her. Should the gathering have been held elsewhere? The best approach probably would have been for the chair to ask whether she preferred to host what was an annual event one final time or to let the task fall to someone else. Unilaterally shifting the function without consultation probably would have been unwise. Open lines of communication can help the candidate through a difficult period and reduce the prospect of disputes over small or large issues.

Checklist on Caring for Unsuccessful Candidates

The institution can take many steps to help the unsuccessful tenure candidate get back on his or her feet elsewhere. Here are some possibilities.

- ✓ Networking about available positions at other institutions. Senior faculty in the department can be an enormous help in identifying possibilities at other institutions. They can contact colleagues nearby or in other parts of the country and urge them to consider the candidate for open positions. If the department, however, was strongly opposed to the award of tenure, the networking function might be better performed by a senior academic administrator. If the tenure denial was based on malfeasance, it would be irresponsible for the institution to help the individual relocate to another campus without adequate disclosure of the problem.
- ✓ Funds for travel and attending conferences. The unsuccessful candidate may find it helpful to have access to funds for attending conferences that have a recruiting component, other travel related to the job search, or maintaining professional contacts. The institution can specifically earmark a reasonable amount for the candidate's use.
- ✓ Subscriptions to periodicals that have vacancy announcements. A personal subscription may relieve the candidate from the burden of hunting down the department's shared copy of any publications that include position listings.
- ✓ Photocopying assistance. The search for an academic position requires large amounts of photocopying. The institution can designate someone to assist with this function. If the institution closely monitors copying charges, the candidate might be given a special allotment.
- ✓ Advice about academic job searches. Some candidates may be out of touch with the logistics of finding an academic position. Colleagues or the placement office may be able to offer "how to" advice on current techniques. The candidate might, for example, welcome advice about online information and networking resources and how to prepare a resume for electronic distribution.
- ✓ Release time, if the candidate desires it. The institution and the candidate may mutually decide that their interests would be best served if the candidate were relieved of certain duties during the terminal contract year. The candidate might, for example, be offered a reduced teaching load. Take care, though, that the decision is mutual. Involuntarily imposing a substantial change in responsibilities on someone denied tenure may create risks. Such action may anger the individual and increase his or her readiness to sue. The faculty handbook may limit the institution's ability to change faculty responsibilities at particular times or in particular ways. If the institution relieves the individual of teaching, the action may violate AAUP's recommended standards on suspension. Mutually agreed-upon release time is, however, acceptable.
- ✓ Portable research support. Occasionally, institutions have provided financial support to continue the faculty member's research at another institution. Such "portable" support can signal the perceived value of the research and enhance the candidate's attractiveness for another position.
- ✓ Other support that fits the individual's unique circumstances. Take the time to learn about the candidate's needs and desires for future professional employment. Then consider whether the institution can help satisfy them. Retraining, tuition waivers, the payment of professional society dues, and library access are but a few resources that the institution may be able to deploy. Every situation is different, so examine each with care.

Take care that any oral or written recommendations are consistent with the grounds for the tenure decision. If the candidate files a lawsuit, those recommendations may crop up as evidence.

Conclusion
Moving Forward

How can an institution move forward in refining and improving its evaluation process? Collaboration among faculty and academic administrators is a key ingredient. Advice from legal counsel may also be appropriate. We offer institutions the following approaches:

- Conduct workshops for department chairs on the appointment and evaluation of tenure-track faculty. Cover topics such as the importance of following institutional procedures, communicating well with tenure-track faculty, and preparing and retaining appropriate documentation. Possible presenters include experienced chairs and administrators, legal counsel, and outside experts. This report could serve as a basis for discussion.
- For smaller colleges, collaborate with neighboring institutions to develop joint annual or semiannual retreats or workshops for chairs and senior faculty.
- Encourage faculty and chairs to attend external programs on evaluation and tenure practices. Some ongoing workshops are listed in the bibliography. Disciplinary association meetings also sponsor occasional sessions. To compound the benefit of external programs, ask the attendees to share the insights they learn with others back on campus. Institutions often overlook the steps of sharing information and promoting campus dialogue with people who return from external programs.
- Have a small working group analyze situations of tenure denial that have occurred in the recent past and formulate recommendations for improvement. Don't limit the recommendations just to revising the wording of campus policy. Also address the behavioral issues of how candidly and consistently the evaluators apply tenure standards.
- If lawsuits or other disputes have occurred, learn from those experiences and make appropriate changes. Calculate the intangible and tangible costs of dispute and devote comparable resources to preventing the next problem that might otherwise occur.
- Engage in a dialogue with tenure-track faculty about their perceptions of the tenure process. Ask about their understanding of the tenure standards and procedures, as well as the quality of the ongoing evaluations they are receiving. The information could be solicited informally through conversations or more formally through surveys. Use your findings to identify areas for possible improvement.

Consideration for tenure is a pivotal moment in the life of the candidate and the institution. The good practices detailed here

are designed to avert problems that can detract from the hard work of evaluating academic achievement. They are also designed to enhance the fairness of the tenure process. A few of the suggestions address institutional policy. Most speak to the words and deeds of the people who implement that policy. We commend these practices to the serious attention of department chairs, other faculty involved in tenure evaluations, and academic administrators.

Endnotes

Introduction

[1] The tenure process has evolved over time. Today, for example, senior faculty colleagues typically vote at the department level on a tenure candidate. In 1959, however, only 26 of 80 institutions surveyed involved faculty in tenure recommendations. The survey authors proposed that tenure procedures "should provide for official action by the faculty, at one or more levels, on all decisions about acquisition of tenure." Commission on Academic Tenure in Higher Education, *Faculty Tenure* (Jossey-Bass, 1973), 218. Yesterday's recommendation has become today's reality.

[2] National Center for Postsecondary Improvement, "Why Is Research the Rule? The Impact of Incentive Systems on Faculty Behavior," *Change* 32 (March/April 2000): 53, 55.

[3] Those involved in the session, held in October 1998, were: Dr. Michael Baer, Senior Vice President for Programs and Analysis, ACE; Peter Byrne, Professor, Georgetown University Law Center; Donald Hood, Professor, Columbia University; Dr. Jonathan Knight, Associate Secretary, AAUP; Sheldon Steinbach, General Counsel, ACE; Patricia Sullivan, Chancellor, University of North Carolina-Greensboro; Donald Wagner, Professor, State University of West Georgia; David Lascell, Esq., Harter, Seecrest & Emery, LLP; and, from United Educators, Janice Abraham, President; Robb Jones, General Counsel; Laura Kumin, Vice President; and Ann Franke, then-Director.

Chapter 1

[4] Relatively little has been written about the intersection of misconduct and tenure evaluation. A few accounts, however, discuss specific situations:

- *Koerselman v. Rhynard,* 875 S.W.2d 347 (Tex. App. 1994). When Professor Rhynard was evaluated for tenure, his senior colleagues inquired about rumors of sexual harassment allegations against him. The case details the actions of the department chair and dean in handling the allegations and their documentation.
- Ruth Shalit, "The Man Who Knew Too Much: A Professor's Probing Teaching Methods Put His Career in Jeopardy (and His School in Court)," *Lingua Franca* 8 (February 1998): 31–40. Discussion of a college's handling of student letters complaining about problems with a tenure candidate, including complaints of harassment.
- American Association of University Professors, "Academic Freedom and Tenure: University of Southern California," *Academe: Bulletin of the AAUP* 81 (November-December 1995): 40–49. See also "Northwestern University: A Case of Denial of Tenure," *Academe: Bulletin of the AAUP* 74 (May-June 1988): 55–70.

[5] "Peer Review," *Chronicle of Higher Education* 45 (March 12, 1999): A47.

[6] Courtney Leatherman, "$12.7-Million Judgment in Tenure Case Leaves Many Academic Experts Stunned," *Chronicle of Higher Education* 45 (February 5, 1999): A14.

Chapter 2

[7] Courtney Leatherman, "$12.7-Million Judgment in Tenure Case Leaves Many Academic Experts Stunned," *Chronicle of Higher Education* 45 (February 5, 1999): A14.

[8] T. Hajian, J. Sizer, and J. Ambash, *Record-Keeping and Reporting Requirements for Independent and Public Colleges and Universities* (Washington, DC: National Association of College and University Attorneys, 1998).

[9] *El-Ghori v. Grimes,* 23 F.Supp. 2d 1259, 1264 (D. Kan. 1998).

[10] *Ganguli v. University of Minnesota,* 512 N.W. 2d 918 (Minn. App. 1994).

Chapter 3

[11] The quotes are all drawn from William G. Tierney and Estela Mara Bensimon, *Promotion and Tenure: Community and Socialization in Academe* (Albany, NY: SUNY Press, 1996), 65, 69, 71.

[12] John B. Conway, *On Being a Department Head: A Personal View* (Providence, RI: American Mathematical Society, 1991), 43-48.

[13] Courtney Leatherman, "$12.7-Million Judgment in Tenure Case Leaves Many Academic Experts Stunned," *Chronicle of Higher Education* 45 (February 5, 1999): A14.

[14] American Association of University Professors, "Statement of Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments," *AAUP Policy Documents and Reports* (Washington, D.C.: AAUP, 1995), 15, 16.

[15] William G. Tierney and Estela Mara Bensimon, *Promotion and Tenure: Community and Socialization in Academe* (Albany, NY: SUNY Press, 1996): 137-8.

Chapter 4

[16] Robin Wilson, "'It's Like You Have Leprosy': The Year After Losing a Tenure Bid," *Chronicle of Higher Education* 44 (March 6, 1998): A12.

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Programs, Workshops, and Conferences

Chairing the Academic Department

The American Council on Education annually sponsors workshops at several locations around the country. Each workshop features five or six expert presenters who lead in-depth sessions. The two-and-a-half-day interactive program attracts chairs and deans from all types of institutions. For more information call ACE at (202) 939-9415, or visit them on the web at www.acenet.edu.

Annual Conference for Academic Chairpersons

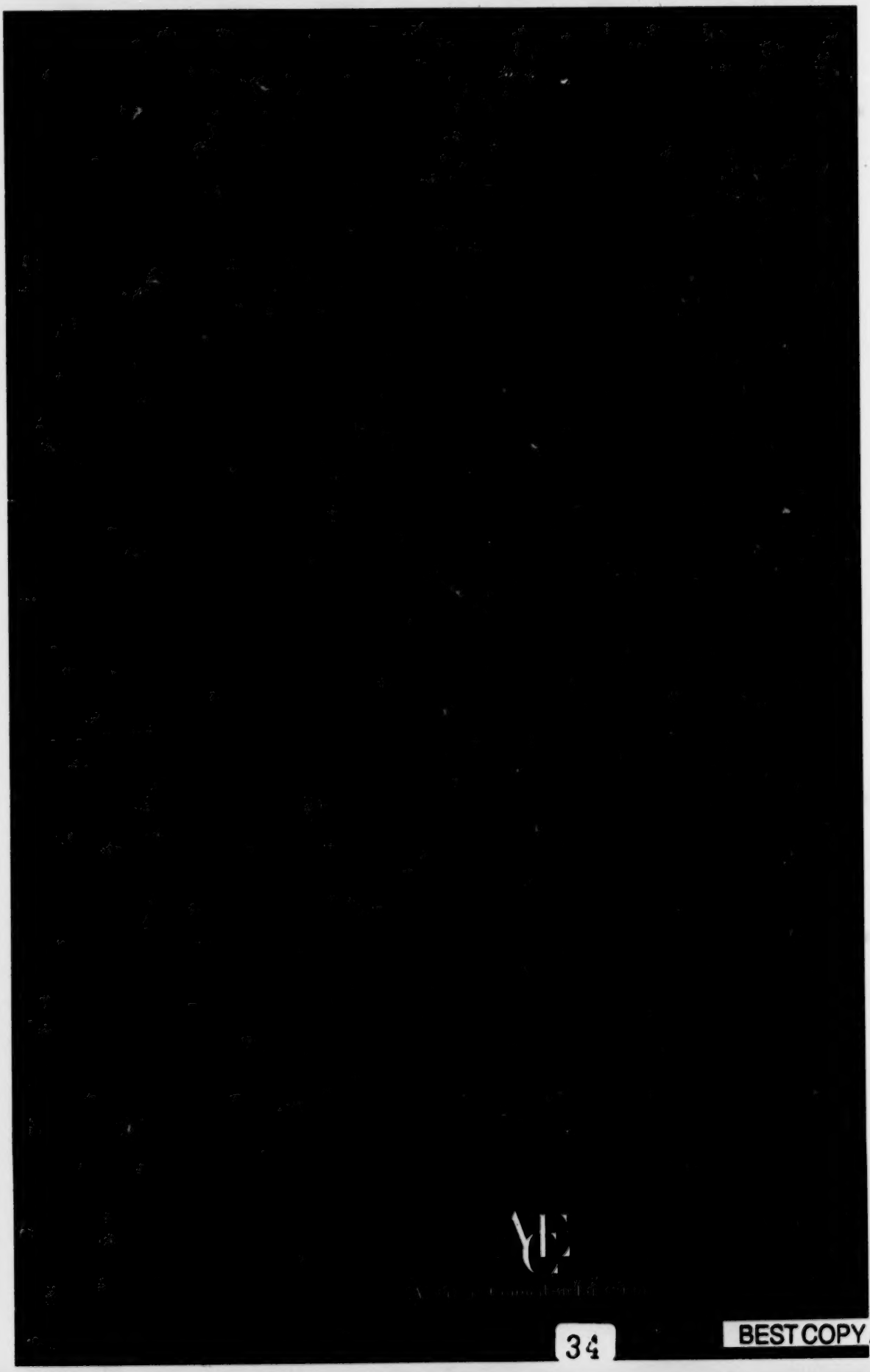
Kansas State University sponsors an annual conference every February in Florida for academic chairs. The overall goal is to help chairs better fulfill their responsibilities. The program format consists of general sessions, paper presentations, panels, and workshops. The proceedings are published annually. For more information, call Kansas State University at (785) 532-5575, or visit them on the web at www.dce.ksu.edu/dce.

Council of Colleges of Arts and Sciences (CCAS)

CCAS sponsors annual seminars for deans and department chairs in eastern and western locations. For more information, call CCAS at (480) 727-6064, or visit them on the web at www.ccas.net.

Others

The American Association of University Professors (AAUP), the American Conference of Academic Deans (ACAD), and many disciplinary associations such as the Modern Language Association are among other groups that sponsor occasional programs and sessions on tenure evaluation practices.



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